

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2184

Cir. Ct. No. 2014TR9971

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

KENOSHA COUNTY,

PLAINTIFF-RESPONDENT,

V.

ROBERT P. ADAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
CHAD G. KERKMAN, Judge. *Affirmed.*

¶1 REILLY, P.J.¹ Robert P. Adams appeals from his conviction for first offense operating while intoxicated (OWI), contrary to WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

§ 346.63(1)(a). Adams disputes the circuit court's finding that the roadways located within Camp Sol R. Crown Boy Scout Camp were held open to the public and that the evidence was sufficient to show that he had driven intoxicated on a public highway. We affirm, as on any given day any licensed driver was free to use the roadways within Camp Sol R. Crown and the evidence established that Adams drove on a public highway while intoxicated to enter Camp Sol R. Crown.

Facts

¶2 On October 11, 2014, at approximately 7:30 p.m., Adams was driving his vehicle within Camp Sol R. Crown. Adams was apparently lost as he was asking for directions to find his scout troop's campsite. Law enforcement was notified around 8:00 p.m. when Adams was observed driving his vehicle into a bush on camp property. Adams told Deputy Teschler that he drove his vehicle into the camp and that he did not drink after he came onto the camp property. Adams stipulated that he was intoxicated while on campground property. Adams was charged with OWI (first offense), operating with a prohibited alcohol concentration (first offense), and possession of open intoxicants in a vehicle.

¶3 Adams moved to dismiss the charges, arguing that he had not driven on "premises held out to the public for use of their motor vehicles" under WIS. STAT. § 346.61 nor on a "highway" as defined in WIS. STAT. §§ 346.02(1) and 340.01(22). A bench trial was held on September 25, 2015. Pursuant to testimony from two representatives of Camp Sol R. Crown and Deputy Teschler, the court found that while the camp is private property and is intended for Boy Scout use, the camp is open to the public as it does not have a gate and is open to employees, invited guests, and parents of invited guests. The court also concluded as a matter of law that Adams had operated his vehicle while intoxicated on the public

highways, as Adams admitted that he drove to the camp from his residence in Mundelein, Illinois, and did not drink alcohol after arriving at the camp. The circuit court found Adams guilty of first offense OWI and dismissed the remaining charges. Adams appeals.

¶4 Drunk driving laws apply to all “premises held out to the public for use of their motor vehicles.” WIS. STAT. § 346.61. Whether a premises is held out for public use is a question of fact to be determined by the trier of fact. *City of Kenosha v. Phillips*, 142 Wis. 2d 549, 558, 419 N.W.2d 236 (1988). The test for whether private property is held out for public use is “whether, on any given day, potentially any resident of the community with a driver’s license and access to a motor vehicle could use the [property] in an authorized manner.” *City of La Crosse v. Richling*, 178 Wis. 2d 856, 860, 505 N.W.2d 448 (Ct. App. 1993). In *State v. Tecza*, 2008 WI App 79, ¶22, 312 Wis. 2d 395, 751 N.W.2d 896, we concluded that the roadways of a private, gated community were held out for public use. In *Tecza*, a person with a driver’s license and a motor vehicle was permitted to use the community’s roads, including postal employees, cable television employees, contractors, food service employees, repair persons, and newspaper delivery persons. *Id.*, ¶19. Despite being a gated community, no signage, fence, or wall restricted entry. *Id.*, ¶20. The community permitted the Geneva Police Department to patrol the roadways and enforce the traffic code. *Id.*, ¶21.

¶5 On dates when Camp Sol R. Crown is hosting a function, as it was on October 11, 2014, motorists can drive into the camp without being stopped or questioned. Ten troops were at the camp on that date—approximately 100 people. Adams himself was on the camp premises trying to find his scout troop’s campsite.

¶6 Camp Sol R. Crown is akin to the gated community in *Tecza*. The camp is clearly a private camp, set aside for Boy Scout activities as well as some non-Boy Scout groups, but like in *Tecza*, Camp Sol R. Crown does not restrict the public from entering. Camp Sol R. Crown has no gates or signs restricting access, and the camp allows the police to patrol its grounds. A entrance sign on the adjacent highway identifies the property as Camp Sol R. Crown, Boy Scouts of America and does not indicate any restriction to access. The fact that Camp Sol R. Crown has an employee who handles security issues does not remove the “open to the public” status. Like the gated community in *Tecza*, private security is but one factor to examine. Like *Tecza*, on any given day, potentially any resident of the community with a driver’s license and access to a motor vehicle can drive into Camp Sol R. Crown. Under the facts of this case, we agree with the circuit court’s conclusion that the roads of Camp Sol R. Crown are on premises held out to the public for use.

¶7 Adams next argues that the evidence was insufficient to prove that he operated his vehicle on a public highway. We disagree. Evidence at the trial revealed that Adams drove into the camp from Highway B—a public highway. Adams admitted that he drove his vehicle into the camp. Adams told Deputy Teschler that he did not drink after he came onto the camp property, and Adams stipulated that he was intoxicated while on campground property. A rational fact finder could have found that Adams drove his car on a public highway while intoxicated. Though Adams was not arrested on a public highway, the only access to the campground was from Highway B, and a rational juror/fact finder could conclude that Adams, based upon what he told Deputy Teschler and his stipulated intoxication, operated a motor vehicle on a public highway while intoxicated.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

